

FILED

JANUARY 13, 2010

KAREN S. MITCHELL
CLERK, U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

KENNETH RAY SCOTT,

Petitioner,

V.

RICK THALER,
Director, Texas Dep't of Criminal Justice,
Correctional Institutions Division,

Respondent.

§ § § § §

2:09-CV-0263

REPORT AND RECOMMENDATION TO DISMISS PETITION FOR A WRIT OF HABEAS CORPUS

On October 28, 2009, petitioner filed with this Court a petition for a writ of habeas corpus challenging a May 7, 2009 prison disciplinary proceeding which resulted in the loss of ninety days of previously earned good-time credits. The disciplinary proceeding took place at the Jordan Unit in Gray County, Texas. As of the date the instant habeas application was filed, petitioner was still incarcerated in the Jordan Unit.

In order to challenge a prison disciplinary adjudication by way of a federal petition for a writ of habeas corpus, a petitioner must, at a minimum, be eligible for mandatory supervised release and have received a punishment sanction which included forfeiture of previously accrued good-time credits. *See Malchi v. Thaler*, 211 F.3d 953, 958 (5th Cir. 2000). In his habeas application, petitioner advises he is in respondent's custody pursuant to a 2002 conviction for the felony offense of burglary of a habitation out of Ector County, Texas, and the resulting twenty-five sentence. In

his habeas application, petitioner acknowledges he is not eligible for mandatory supervised release.¹ While petitioner appears to have lost good-time credits in the disciplinary proceeding, petitioner is not eligible for mandatory supervised release due to his conviction for burglary of a habitation. *See* Tex. Gov't Code § 508.149(a)(13). He therefore cannot challenge a prison disciplinary proceeding by way of a federal petition for a writ of habeas corpus. *See Malchi*, 211 F.3d at 958.

RECOMMENDATION

It is the RECOMMENDATION of the undersigned United States Magistrate Judge to the United States District Judge that the petition for a writ of habeas corpus filed by petitioner KENNETH RAY SCOTT be DISMISSED.

INSTRUCTIONS FOR SERVICE

The United States District Clerk is directed to send a copy of this Report and Recommendation to each party by the most efficient means available.

IT IS SO RECOMMENDED.

ENTERED this 13th day of January, 2010.


CLINTON E. AVERITTE
UNITED STATES MAGISTRATE JUDGE

¹ Additionally, the Offender Information Detail on petitioner maintained by the Texas Department of Criminal Justice reflects petitioner's projected release date is the same as his maximum sentence date, further indicating petitioner is not eligible for mandatory supervised release.

*** NOTICE OF RIGHT TO OBJECT ***

Any party may object to these proposed findings, conclusions and recommendation. In the event parties wish to object, they are hereby NOTIFIED that the deadline for filing objections is fourteen (14) days from the date of filing as indicated by the “entered” date directly above the signature line. Service is complete upon mailing, Fed. R. Civ. P. 5(b)(2)(C), or transmission by electronic means, Fed. R. Civ. P. 5(b)(2)(E). **Any objections must be filed on or before the fourteenth (14th) day after this recommendation is filed** as indicated by the “entered” date. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d).

Any such objections shall be made in a written pleading entitled “Objections to the Report and Recommendation.” Objecting parties shall file the written objections with the United States District Clerk and serve a copy of such objections on all other parties. A party’s failure to timely file written objections to the proposed findings, conclusions, and recommendation contained in this report shall bar an aggrieved party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings, legal conclusions, and recommendation set forth by the Magistrate Judge in this report and accepted by the district court. *See Douglass v. United Services Auto. Ass’n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).